

SUBCHAPTER F—LIABILITY

PART 4061—AMOUNTS PAYABLE BY THE PENSION BENEFIT GUARANTY CORPORATION

AUTHORITY: 29 U.S.C. 1302(b)(3).

SOURCE: 61 FR 34079, July 1, 1996, unless otherwise noted.

§ 4061.1 Cross-references.

See part 4022 of this chapter regarding benefits payable under terminated single-employer plans and § 4281.47 of this chapter regarding financial assistance to pay benefits under insolvent multiemployer plans.

PART 4062—LIABILITY FOR TERMINATION OF SINGLE-EMPLOYER PLANS

Sec.

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AUTHORITY: 29 U.S.C. 1302(b)(3), 1362–1364, 1367, 1368.

SOURCE: 61 FR 34079, July 1, 1996, unless otherwise noted.

§ 4062.1 Purpose and scope.

The purpose of this part is to set forth rules for determination and payment of the liability incurred, under section 4062(b) of ERISA, upon termination of any single-employer plan and, to the extent appropriate, determination of the liability incurred with respect to multiple employer plans under sections 4063 and 4064 of ERISA. The provisions of this part regarding the amount of liability to the PBGC that is incurred upon termination of a single-employer plan apply with respect to a plan for which a notice of intent to terminate under section 4041(c)

of ERISA is issued or proceedings to terminate under section 4042 of ERISA are instituted after December 17, 1987. Those provisions also apply, to the extent described in paragraph (a) of this section, to the amount of liability for withdrawal from a multiple employer plan after that date.

§ 4062.2 Definitions.

The following terms are defined in § 4001.2 of this chapter: benefit liabilities, Code, contributing sponsor, controlled group, ERISA, fair market value, guaranteed benefit, multiple employer plan, notice of intent to terminate, PBGC, person, plan, plan administrator, proposed termination date, single-employer plan, and termination date.

In addition, for purposes of this part, the term *collective net worth of persons subject to liability in connection with a plan termination* means the sum of the individual net worths of all persons that have individual net worths which are greater than zero and that (as of the termination date) are contributing sponsors of the terminated plan or members of their controlled groups, as determined in accordance with section 4062(d)(1) of ERISA and § 4062.4 of this part.

§ 4062.3 Amount and payment of section 4062(b) liability.

(a) *Amount of liability*—(1) *General rule*. Except as provided in paragraph (a)(2) of this section, the amount of section 4062(b) liability is the total amount (as of the termination date) of the unfunded benefit liabilities (within the meaning of section 4001(a)(18) of ERISA) to all participants and beneficiaries under the plan, together with interest calculated from the termination date in accordance with § 4062.7.

(2) *Special rule in case of subsequent finding of inability to pay guaranteed benefits*. In any distress termination proceeding under section 4041(c) of ERISA and part 4041 of this chapter in which (as described in section 4041(c)(3)(C)(ii) of ERISA), after a determination that the plan is sufficient for benefit liabilities or for guaranteed

benefits, the plan administrator finds that the plan is or will be insufficient for guaranteed benefits and the PBGC concurs with that finding, or the PBGC makes such a finding on its own initiative, actuarial present values shall be determined as of the date of the notice to, or the finding by, the PBGC of insufficiency for guaranteed benefits.

(b) *Payment of liability.* Section 4062(b) liability is due and payable as of the termination date, in cash or securities acceptable to the PBGC, except that, as provided in § 4062.8(c), the PBGC shall prescribe commercially reasonable terms for payment of so much of such liability as exceeds 30 percent of the collective net worth of persons subject to liability in connection with a plan termination. The PBGC may make alternative arrangements, as provided in § 4062.8(b).

§ 4062.4 Determinations of net worth and collective net worth.

(a) *General rules.* When a contributing sponsor, or member(s) of a contributing sponsor's controlled group, notifies and submits information to the PBGC in accordance with § 4062.6, the PBGC shall determine the net worth, as of the net worth record date, of that contributing sponsor and any members of its controlled group based on the factors set forth in paragraph (c) of this section and shall include the value of any assets that it determines, pursuant to paragraph (d) of this section, have been improperly transferred. In making such determinations, the PBGC will consider information submitted pursuant to § 4062.6. The PBGC shall then determine the collective net worth of persons subject to liability in connection with a plan termination.

(b) *Partnerships and sole proprietorships.* In the case of a person that is a partnership or a sole proprietorship, net worth does not include the personal assets and liabilities of the partners or sole proprietor, except for the assets included pursuant to paragraph (d) of this section. As used in this paragraph, "personal assets" are those assets which do not produce income for the business being valued or are not used in the business.

(c) *Factors for determining net worth.* A person's net worth is equal to its fair

market value and fair market value shall be determined on the basis of the factors set forth below, to the extent relevant; different factors may be considered with respect to different portions of the person's operations.

(1) A bona fide sale of, agreement to sell, or offer to purchase or sell the business of the person made on or about the net worth record date.

(2) A bona fide sale of, agreement to sell, or offer to purchase or sell stock or a partnership interest in the person, made on or about the net worth record date.

(3) If stock in the person is publicly traded, the price of such stock on or about the net worth record date.

(4) The price/earnings ratios and prices of stocks of similar trades or businesses on or about the net worth record date.

(5) The person's economic outlook, as reflected by its earnings and dividend projections, current financial condition, and business history.

(6) The economic outlook for the person's industry and the market it serves.

(7) The appraised value, including the liquidating value, of the person's tangible and intangible assets.

(8) The value of the equity assumed in a plan of reorganization of a person in a case under title 11, United States Code, or any similar law of a state or political subdivision thereof.

(9) Any other factor relevant in determining the person's net worth.

(d) *Improper transfers.* A person's net worth shall include the value of any assets transferred by the person which the PBGC determines were improperly transferred for the purpose, as inferred from all the facts and circumstances, and with the effect of avoiding liability under this part. Assets "improperly transferred" include but are not limited to assets sold, leased or otherwise transferred for less than adequate consideration and assets distributed as gifts, capital distributions and stock redemptions inconsistent with past practices of the employer. The word *transfer* includes but is not limited to sales, assignments, pledges, leases, gifts and dividends.

§ 4062.5 Net worth record date.

(a) *General.* Unless the PBGC establishes an earlier net worth record date pursuant to paragraph (b) of this section, the net worth record date, for all purposes under this part, is the plan's termination date.

(b) *Establishment of an earlier net worth record date.* At any time during a termination proceeding, the PBGC, in order to prevent undue loss to or abuse of the plan termination insurance system, may establish as the net worth record date an earlier date during the 120-day period ending with the termination date.

(c) *Notification.* Whenever the PBGC establishes an earlier net worth record date, it shall immediately give liable person(s) written notification of that fact. The written notice may also include a request for additional information, as provided in § 4062.6(a)(3).

§ 4062.6 Net worth notification and information.

(a) *General.* (1) A contributing sponsor or member of the contributing sponsor's controlled group that believes section 4062(b) liability exceeds 30 percent of the collective net worth of persons subject to liability in connection with a plan termination shall—

(i) So notify the PBGC by the 90th day after the notice of intent to terminate is filed with the PBGC or, if no notice of intent to terminate is filed with the PBGC and the PBGC institutes proceedings under section 4042 of ERISA, within 30 days after the establishment of the plan's termination date in such proceedings; and

(ii) Submit to the PBGC the information specified in paragraph (b) of this section with respect to the contributing sponsor and each member of the contributing sponsor's controlled group (if any)—

(A) By the 120th day after the proposed termination date, or

(B) If no notice of intent to terminate is filed with the PBGC and the PBGC institutes proceedings under section 4042 of ERISA, within 120 days after the establishment of the plan's termination date in such proceedings.

(2) If a contributing sponsor or a member of its controlled group complies with the requirements of para-

graph (a)(1) of this section, the PBGC will consider the requirements to be satisfied by all members of that controlled group.

(3) The PBGC may require any person subject to liability—

(i) To submit the information specified in paragraph (b) of this section within a shorter period whenever the PBGC believes that its ability to obtain information or payment of liability is in jeopardy, and

(ii) To submit additional information within 30 days, or a different specified time, after the PBGC's written notification that it needs such information to make net worth determinations.

(4) If a provision of paragraph (b) of this section or a PBGC notice specifies information previously submitted to the PBGC, a person may respond by identifying the previous submission in which the response was provided.

(b) *Net worth information.* The following information specifications apply, individually, with respect to each person subject to liability:

(1) An estimate, made in accordance with § 4062.4, of the person's net worth on the net worth record date and a statement, with supporting evidence, of the basis for the estimate.

(2) A copy of the person's audited (or if not available, unaudited) financial statements for the 5 full fiscal years plus any partial fiscal year preceding the net worth record date. The statements must include balance sheets, income statements, and statements of changes in financial position and must be accompanied by the annual reports, if available.

(3) A statement of all sales and copies of all offers or agreements to buy or sell at least 25 percent of the person's assets or at least 5 percent of the person's stock or partnership interest, made on or about the net worth record date.

(4) A statement of the person's current financial condition and business history.

(5) A statement of the person's business plans, including projected earnings and, if available, dividend projections.

(6) Any appraisal of the person's fixed and intangible assets made on or about the net worth record date.

(7) A copy of any plan of reorganization, whether or not confirmed, with respect to a case under title 11, United States Code, or any similar law of a state or political subdivision thereof, involving the person and occurring within 5 calendar years prior to or any time after the net worth record date.

(c) *Incomplete submission.* If a contributing sponsor and/or members of the contributing sponsor's controlled group do not submit all of the information required pursuant to paragraph (a) of this section (other than the estimate described in paragraph (b)(1) of this section) with respect to each person subject to liability, the PBGC may base determinations of net worth and the collective net worth of persons subject to liability in connection with a plan termination on any such information that such person(s) did submit, as well as any other pertinent information that the PBGC may have. In general, the PBGC will view information as of a date further removed from the net worth record date as having less probative value than information as of a date nearer to the net worth record date.

§ 4062.7 Calculating interest on liability and refunds of overpayments.

(a) *Interest.* Whether or not the PBGC has granted deferred payment terms pursuant to § 4062.8, the amount of liability under this part includes interest, from the termination date, on any unpaid portion of the liability. Such interest accrues at the rate set forth in paragraph (c) of this section until the liability is paid in full and is compounded daily. When liability under this part is paid in more than one payment, the PBGC will apply each payment to the satisfaction of accrued interest and then to the reduction of principal.

(b) *Refunds.* If a contributing sponsor or member(s) of a contributing sponsor's controlled group pays the PBGC an amount that exceeds the full amount of liability under this part, the PBGC shall refund the excess amount, with interest at the rate set forth in paragraph (c) of this section. Interest on an overpayment accrues from the later of the date of the overpayment or 10 days prior to the termination date

until the date of the refund and is compounded daily.

(c) *Interest rate.* The interest rate on liability under this part and refunds thereof is the annual rate prescribed in section 6601(a) of the Code, and will change whenever the interest rate under section 6601(a) of the Code changes.

§ 4062.8 Arrangements for satisfying liability.

(a) *General.* The PBGC will defer payment, or agree to other arrangements for the satisfaction, of any portion of liability to the PBGC only when—

(1) As provided in paragraph (b) of this section, the PBGC determines that such action is necessary to avoid the imposition of a severe hardship and that there is a reasonable possibility that the terms so prescribed will be met and the entire liability paid; or

(2) As provided in paragraph (c) of this section, the PBGC determines that section 4062(b) liability exceeds 30 percent of the collective net worth of persons subject to liability in connection with a plan termination.

(b) *Upon request.* If the PBGC determines that such action is necessary to avoid the imposition of a severe hardship on persons that are or may become liable under section 4062, 4063, or 4064 of ERISA and that there is a reasonable possibility that persons so liable will be able to meet the terms prescribed and pay the entire liability, the PBGC, in its discretion and when so requested in accordance with paragraph (b)(2) of this section, may grant deferred payment or other terms for the satisfaction of such liability.

(1) In determining what, if any, terms to grant, the PBGC shall examine the following factors:

(i) The ratio of the liability to the net worth of the person making the request and (if different) to the collective net worth of persons subject to liability in connection with a plan termination.

(ii) The overall financial condition of persons that are or may become liable, including, with respect to each such person—

(A) The amounts and terms of existing debts;

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(B) The amount and availability of liquid assets;

(C) Current and past cash flow; and

(D) Projected cash flow, including a projection of the impact on operations that would be caused by the immediate full payment of the liability.

(iii) The availability of credit from private sector sources to the person making the request and to other liable persons.

(2) A contributing sponsor or member of a contributing sponsor's controlled group may request deferred payment or other terms for the satisfaction of any portion of the liability under section 4062, 4063, or 4064 of ERISA at any time by filing a written request. The request must include the information specified in § 4062.6(b), except that—

(i) If the request is filed one year or more after the net worth record date, references to “the net worth record date” in § 4062.6(b) shall be replaced by “the most recent annual anniversary of the net worth record date”; and

(ii) Information that already has been submitted to the PBGC need not be submitted again.

(c) *Liability exceeding 30 percent of collective net worth.* If the PBGC determines that section 4062(b) liability exceeds 30 percent of the collective net worth of persons subject to the liability, the PBGC will, after making a reasonable effort to reach agreement with such persons, prescribe commercially reasonable terms for payment of so much of the liability as exceeds 30 percent of the collective net worth of such persons. The terms prescribed by the PBGC for payment of that portion of the liability (including interest) will provide for deferral of 50 percent of any amount otherwise payable for any year if a person subject to such liability demonstrates to the satisfaction of the PBGC that no person subject to such liability has any individual pre-tax profits (within the meaning of section 4062(d)(2) of ERISA) for such person's last full fiscal year ending during that year.

(d) *Interest.* Interest on unpaid liability is calculated in accordance with § 4062.7(a).

(e) *Security during period of deferred payment.* As a condition to the granting of deferred payment terms, PBGC may,

in its discretion, require that the liable person(s) provide PBGC with such security for its obligations as the PBGC deems adequate.

§ 4062.9 Filing of documents.

(a) *Date of filing.* Any document (including information) required or permitted to be filed under this part is considered filed on the date of the United States postmark stamped on the cover in which the document is mailed, provided that—

(1) The postmark was made by the United States Postal Service; and

(2) The document was mailed postage prepaid, properly packaged and addressed to the PBGC. If the conditions stated in both paragraphs (a)(1) and (a)(2) of this section are not met, the document is considered filed on the date it is received by the PBGC. Documents received after regular business hours are considered filed on the next regular business day.

(b) *Where to file.* Payments of liability shall be clearly designated as such and include the name of the plan. Such payments shall be sent to the address specified in the notification or demand for liability issued by the PBGC under § 4068.3 or, if not so specified, to the address provided, upon request, by the Investment Management Division, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026. Any document (including information) required or permitted to be filed under this part, except for documents relating to appeals, shall be submitted to the Insurance Operations Department, Pension Benefit Guaranty Corporation, at the above address. Any document submitted pursuant to part 4003 in connection with an appeal of an initial determination shall be submitted to the Appeals Board, Pension Benefit Guaranty Corporation, at the above address.

§ 4062.10 Computation of time.

In computing any period of time prescribed or allowed by this subpart, the day of the act, event, or default from which the designated period of time begins to run is not counted. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or Federal holiday, in which event the

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period runs until the end of the next day which is not a Saturday, Sunday, or a Federal holiday. For the purpose of computing interest accrued, a Saturday, Sunday or Federal holiday referred to in the previous sentence shall be included.

(Approved by the Office of Management and Budget under control number 1212-0017.)

PART 4063—WITHDRAWAL LIABILITY; PLANS UNDER MULTIPLE CONTROLLED GROUPS

AUTHORITY: 29 U.S.C. 1302(b)(3).

SOURCE: 61 FR 34082, July 1, 1996, unless otherwise noted.

§ 4063.1 Cross-references.

(a) Part 4062, subpart A, of this chapter sets forth rules for determination and payment of the liability incurred, under section 4062(b) of ERISA, upon termination of any single-employer plan and, to the extent appropriate, determination of the liability incurred with respect to multiple employer plans under sections 4063 and 4064 of ERISA.

(b) Part 4068 of this chapter includes rules regarding the PBGC's lien under

section 4068 of ERISA with respect to liability arising under section 4062, 4063, or 4064.

PART 4064—LIABILITY ON TERMINATION OF SINGLE-EMPLOYER PLANS UNDER MULTIPLE CONTROLLED GROUPS

AUTHORITY: 29 U.S.C. 1302(b)(3).

SOURCE: 61 FR 34082, July 1, 1996, unless otherwise noted.

§ 4064.1 Cross-references.

(a) Part 4062, subpart A, of this chapter sets forth rules for determination and payment of the liability incurred under section 4062(b) of ERISA, upon termination of any single-employer plan and, to the extent appropriate, determination of the liability incurred with respect to multiple employer plans under sections 4063 and 4064 of ERISA.

(b) Part 4068 of this chapter includes rules regarding the PBGC's lien under section 4068 of ERISA with respect to liability arising under section 4062, 4063, or 4064.